IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.2284 OF 2005

The Regional Director,
Employess State Insurance Corpn. ...Appellant
Vs.
M/s. Hotel Suresh ...Respondent

WITH
FIRST APPEAL NO.2283 OF 2005

The Regional Director,
Employess State Insurance Corpn. ...Appellant
Vs.
M/s. Hotel Suresh ...Respondent

Shri H.V. Mehta for the Appellants in both the Appeals.

Shri C.R. Naydu i/by M/s C.R.Naydu and Co for the Respondents in both the Appeals.

CORAM : ABHAY S. OKA, J.

DATE : MAY 05, 2006.

JUDGMENT:

1. Heard the Advocates appearing for the parties. These Appeals are preferred by the Employees' State Insurance Corporation under Section 82 of the Employees' State Insurance Act, 1948 (hereinafter referred to as the said Act of 1948). The challenge in these Appeals is to a common judgment and order dated 15th April, 2005 passed by the learned Judge of the Employees State Insurance Court, Bombay in Application (E.S.I.) No.13 of 1992 and in Application (E.S.I.) No.106 of 1990 respectively. As the facts in

both the Appeals are more or less similar, I have dealt with First Appeal No.2284 of 2005. There is no dispute between the parties that the decision in First Appeal No.2284 of 2005 will also apply to First Appeal No.2283 of 2005.

2. The establishment of the Respondent was found covered for the purposes of the said Act of 1948 for the period between 01st October, 1987 to 30th September, 1989. An order for recovery of contribution of Rs.40,424/- was issued under section 45-A of the said Act of 1948 against the Respondent. Therefore, the said Application (E.S.I.) No.13 of 1992 was filed by the Respondent by invoking provisions of section 75 of the said Act of 1948.

3. By the impugned judgment and order, the learned Judge held that the demand made by the Appellant was legal and valid. In the operative part of the impugned judgment and order, the learned Judge has directed as under:

> "In Application ESI No.13 of 1992 applicant is hereby directed to pay an amount of Rs.40,424 to the ESI Corporation with interest at the rate of 6% per annum from

the date of the order passed under section 45A of the ESI Act i.e. 28.3.1991 till the date of filing this application i.e. 14.2.1992."

4. The only contention raised by the Appellant-Employees' State Insurance Corporation in this Appeal is that the order of the learned Judge directing payment of interest at the rate of 6% per annum is contrary to sub-section 5(a) of section 39 of the said Act of 1948. He submitted that the learned Judge has no jurisdiction to fix the rate of interest which is lesser than the rate fixed by the statue. He has placed reliance on the decisions of various High Courts in support on his contention. He submitted that there was no discretion left with the learned Judge to award less interest than what is provided in the statute. Shri Naydu appearing on behalf of the Respondent submitted that interest at the rate of 6% is made payable as during the relevant period for which the demand was made, the said Act of 1948 provided for interest at the rate of 6% per cent and the amendment carried out to the statute enhancing the rate to 12 per cent per annum cannot be retrospectively applied to the demand for a period prior to the date on which the said Act of 1948 was

amended for enhancing the rate of interest to 12 per cent per annum. He has also placed reliance on certain decisions a reference to which is made at a later stage.

5. I have considered the submissions. Sub-section 5(a) of section 39 of the said Act of 1948 reads thus:

> (5)(a) If any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of twelve per cent per annum or at such higher rate as may be specified in the regulations till the date of its actual payment:
>
> . Provided that higher interest specified in the regulations shall not exceed the lending rate of interest charged by any scheduled bank.
>
> (b) Any interest recoverable under clause (a) may be recovered as an arrear of

land revenue or under section 45C to section 451.

Explanation.- In this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 to 1934).

Sub-section 5(a) was brought on the statute book by section 12 of the Employees' State Insurance (Amendment) Act, 1989 (hereinafter referred to as the Amendment Act). The Amendment Act came into force with effect from 20th October, 1989. Admittedly, the demand made by the Appellant for contribution is for a period prior to 20th October, 1989. There is no indication in the Amendment Act that the amended provisions have retrospective operation.

6. Shri Mehta appearing for the Appellant has placed reliance on various decisions. The said decisions are as under:

(i) 2004 I CLR Page 801 (Employees' State Insurance Corporation, Calcutta Vs. Steeloo Products, Prop. Expo Enterprises (P.) Ltd., Calcutta)

(ii) II LLJ Page 92 (Regional Director, Employees State Insurance Corporation Vs. Manjog Home & Organisation)

(iii) 2004- I- LLJ Page 272 (Joint Director of E.S.I. Corporation, Hubli & Anr. Vs. Riddhi Siddhi and Chemicals Ltd, Gokak)

(iv) 1979 4 Supreme Court Cases Page 573 (Organo Chemical Industries & Anr. Vs. Union of India & Ors.) and

(v) 1983 LAB.I.C. Page 410 (Employees' State Insurance Corporation, Chandigarh Vs. The Markfed Vanaspati & Allied Industries, Ludhiana)

Shri Naydu relied upon a decision of the Apex Court in the case of Kerala State Electricity Board & Anr. Vs. Valsala K & Anr. reported in 1999 II CLR Page 868.

7. The issue involved in this Appeal is whether in case of a demand made under section 45-A of the said Act of 1948 which relates to a period prior to 20th October, 1989, interest at the rate of 12 per cent per annum can be ordered to be paid on the basis of the amended provision which has come into force on 20th October, 1989.

8. In none of the decisions which are relied upon by Shri Mehta appearing for the Appellant the issue which arises for consideration in this Appeal has been raised and decided. In the case of Regional Director Vs. Manjog Home & Organisation (supra), from paragraph No.7 of the decision it appears that the issue is not specifically decided. Paragraph Nos.6 and 7 of the said decision read thus:

> "6. When the Regional Director or Deputy Director passed the order levying interest at 6% that was the rate prescribed under the statute at that time. There was no question of the Corporation filing any appeal against that order. Once the respondents challenged that order before the ESI Court, that order got merged with the order passed by the ESI Court. The Court while passing the order ought to have considered the amended provisions regarding levy of interest. Section 39(5) does not give any discretion either to the authority or to the Court to levy interest at a rate lesser than 12% after the amendment came into force. As such the Court could not have awarded interest only at 6% even for a

period after the coming into force of the amended Act. In all cases where contribution which has become due has remained unpaid, then interest will have to be paid at the statutory rate till the amount is paid. If the rate as provided under the statute was 6% upto October 20, 1989 and thereafter if it has become 12%, then the interest will have to be paid at 6% from the date of the default upto October 20, 1989 and thereafter at 12%. If the contributions continue to remain unpaid and if the statute is again changed and higher rate is prescribed then from the date such higher rates come into force they may have to pay even at the rate. As such in all these appeals the order of the Court will have to be modified with regard to the rate of interest.

7. For the above reasons, these Appeals are allowed in part and the orders of the lower Court are modified by awarding interest at the rate of 6% per annum from the date of default upto October 20, 1989 and at 12% p.a. from October 20, 1989

> onwards till payment. It is made clear that before the payment is made if the rate of interest is varied by amendment of the statute, then the respondent would be liable to pay the interest at the varied rate from the date on which such variation would come into force on the amount remaining unpaid."

9. The aforesaid decision does not specifically decide the question which arises in these Appeals. In the case of Joint Manager, ESI Corporation Vs. Riddhi Siddhi & Chemicals Ltd.(supra) the demand was for the period from January 1991 to August 1992, therefore, the said decision will have no application. The judgment of the Apex Court which is relied upon by the Appellant and the other two judgments do not specifically deal with question of retrospective operation of sub-section 5(a) of section 39 of the said Act of 1948.

10. In so far as judgment relied upon by Shri Naydu appearing for the Appellant in the case Kerala Electricity Board (supra) is concerned, the Apex Court has dealt with provisions of section 4 and section 4A of the Workmen’s Compensation Act, 1939 as amended by

Act 30 of 1995. The amendment to sections 4 and 4A was brought into force with effect from 15th September, 1995 by which compensation payable and the rate of interest payable on compensation was enhanced. The question before the Apex Court was that whether the amended provisions will apply to a claim for compensation arising out of an accident which occurred before 15th September, 1995. Paragraph Nos.2 to 5 of the said decision read thus:

> "2. Various High Courts in the country, while dealing with the claim for compensation under the Workmen's Compensation Act have uniformly taken the view that the relevant date for determining the rights and liabilities of the parties is the date of the accident.
>
> 3. A four Judge Bench of this Court in Pratap Narain Singh Deo Vs. Srinivas Sabata & Anr. 1976 (1) SCC 289 speaking through Shinghai, J. has held that an employer becomes liable to pay compensation as soon as the personal injury is cause to the workmen by the accident which arose out of and in the course of employment. Thus,

the relevant date for determination of the rate of compensation, is the date of the accident and not the date of adjudication of the claim.

4. A two Judge Bench of this Court in the New India Assurance Company Limited v. V.K. Neelakandan & Ors. etc. etc. Civil Appeal Nos.16904-16906 of 1996, decided on 6.11.1996, however, took the view that Workmen's Compensation Act, being a special legislation for the benefit of the Workmen, the benefit as available on the date of adjudication should be extended to the workmen and not the compensation which was payable on the date of the accident. The two Judge Bench in Neelakandan's case (supra), however, did not take notice of the judgment of the larger Bench in Pratap Narain Singh Deo's case, as it presumably was not brought to the notice of their Lordships. Be that as it may, in view of the categorical law laid down by the larger Bench in Pratap Narain Singh Deo's case, the view expressed by the two Judge Bench in Neelakandan's case is not correct.

5. Our attention has also been drawn to a judgment of the Full Bench of the Kerala High Court in United India Insurance Co. Ltd vs. Alavi 1998(3) LLN 285 (FB) **wherein the Full Bench precisely considered the same question and examined both the above noted judgments. It took the view that the injured workman becomes entitled to get compensation the moment he suffers personal injuries of the types contemplated by the provisions of the Workmen's Compensation Act and it is the amount of compensation payable on the date of the accident and not the amount of compensation payable on account of the amendment made in 1995, which is relevant. The decision of the Full Bench of the Kerala High Court, to the extent it is in accord with the judgment of the larger Bench of this Court in Pratap Singh Narain Singh Deo v. Srinivas Sabata and Anr. (supra) lays down the correct law and we approve it."**(Emphasis supplied)

11. What has been held by the Apex Court in the

aforesaid case is certainly relevant for deciding the present case. Section 4 and Section 4A of the Workmen's Compensation Act, 1923 were amended with effect from 15th September, 1995. The Apex Court has answered the question by holding that benefit of the Amended provision cannot be given to a claim arising out of an accident which has occurred prior to the date on which the amendment came into force.

12. In the present case the demand for compensation by the Appellant relates to a period prior to 20th October, 1989. At that time the Employees' State Insurance (Amendment) Act, 1989 had not come into force. If the submission made by Shri Mehta appearing for the Appellant is accepted, interest at the rate of 12% per annum will be payable on the contribution payable by the Respondent. When the default was committed by the Respondent, the law provided for payment of interest at the rate of 6% per annum on the outstanding amount. On the outstanding amount for the period prior to 20th October, 1989, the Respondent cannot be penalised by directing him to pay interest at the rate of 12% per annum. The amended provision will apply in a case in which default is for a period after 20th October, 1989. Therefore, no fault can be found with the order passed by the

learned Trial Judge of directing payment of interest at the rate of 6% per annum which was the rate provided prior to 20th October, 1989. The Trial Court had no discretion to award interest at the rate which is more than the rate prescribed by the statute at the relevant time. Therefore, the Trial Court has applied the prevailing rate of interest as on the date of the default. I do not agree with the view taken by the learned Single Judge of Karnataka High Court that from the date on which the amendment came into force, interest at the rate of 12% per annum will be payable on contribution amount payable in respect of a period which is prior to 20th October, 1989. Retrospective effect cannot be given to a penal provision of payment of interest.

13. Hence, there is no merit in the Appeal and the same must fail. The Appeals are accordingly dismissed with no orders as to costs.

JUDGE